

## APPEAL NO. 010504

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on January 10, 2001. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury to the right side of her abdomen and lower back on \_\_\_\_\_, and that the claimant does not have disability.

The claimant appeals, contending that she did sustain a compensable injury and she has had disability. The respondent (carrier) responds, urging affirmance.

### DECISION

Affirmed.

The claimant worked as an assembler for the employer. Her duties included loading scrap into a large box, and moving it to a disposal area with a pallet jack. The claimant asserts that while performing this task on \_\_\_\_\_, the handle of the pallet jack struck her in the lower right abdominal area, causing her to jerk backward and injure her back. There were no witnesses to the accident. The claimant was sent to the company doctor on June 6 or 7, and was diagnosed as having an abdominal strain. She has subsequently been found to have a lumbar strain.

The hearing officer had difficulty reconciling the various accounts given by the claimant as to how the injury occurred, or even how the pallet jack handle could have impacted the claimant in the manner she described. The claimant had the burden to prove that she sustained the claimed injury and that she had disability as that term is defined in Section 401.011(16). Texas Workers' Compensation Commission Appeal No. 94248, decided April 12, 1994. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)), resolves the conflicts and inconsistencies in the evidence (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)), and determines what facts have been established from the conflicting evidence. St. Paul Fire & Marine Insurance Company v. Escalera, 385 S.W.2d 477 (Tex. Civ. App.-San Antonio 1964, writ ref'd n.r.e.). As an appellate-reviewing tribunal, the Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find them so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

In that we are affirming the hearing officer's decision that the claimant did not have a compensable injury, the claimant cannot, by definition in Section 401.011(16), have disability.

The decision and order of the hearing officer are affirmed.

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Thomas A. Knapp  
Appeals Judge

CONCUR:

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Susan M. Kelley  
Appeals Judge

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Michael B. McShane  
Appeals Judge